



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

LDWSF  
12.3.55v1  
04/03/87

APR 3 1987

REPLY TO  
ATTN OF:

S0-125

MEMORANDUM

SUBJECT: MPE Consent Decree

FROM: Monica Kirk *for M. Heinicke (for)*  
Assistant Regional Counsel

TO: Rick Parkin  
Mike Matta  
Jack Fox  
Jim Nicoll  
Lee Rees

Attached is a draft consent decree, for your review. The attachment will be developed by Grover Partee.

We can present the Decree to MPE, with the understanding that the Attachment will be forthcoming and if unacceptable, can be mediated as provided in the Decree. Since MPE is anxious to avoid listing problems and EPA Headquarters has agreed not to list MPE if the clean up Consent Decree is signed by April 25, 1987 (within 15 days of the criminal sentencing which automatically lists them), MPE may sign.

I'll be in Washington, D.C. from 3/31-4/6. Please comment by April 8 so we can approach MPE, as appropriate.

USEPA SF



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1 JACKSON L. FOX  
2 Assistant United States Attorney  
3 District of Washington  
4 3600 Seafirst Fifth Avenue Plaza  
5 Seattle, Washington 98104  
6 (206) 442-7970

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9 IN THE UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
11 AT SEATTLE

11 UNITED STATES OF AMERICA,	)	
	)	
12 Plaintiff,	)	No. C85-382
	)	
13 STATE OF WASHINGTON,	)	STIPULATION
	)	AND
14 Plaintiff-Intervenor,	)	CONSENT DECREE
	)	
15 v.	)	
	)	
16 MARINE POWER AND EQUIPMENT	)	
17 COMPANY, INC., and WFI	)	
INDUSTRIES, INC.	)	
	)	
18 Defendants.	)	

19 Plaintiff, the United States of America, on behalf of the United  
20 States Environmental Protection Agency (EPA), having filed a complaint  
21 herein on March 8, 1985, alleging that defendant has violated the Clean  
22 Water Act, 33 U.S.C. §1252 et seq., and the State of Washington (the state)  
23 having filed a motion and complaint in intervention on May 23, 1985, and the  
24 parties by their attorneys having consented to entry of this Decree;

25 NOW THEREFORE, before the taking of any testimony herein, and  
26 without trial or adjudication of any issue of fact or law herein, and upon  
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1 consent of the parties, it is

2           HEREBY STIPULATED AS FOLLOWS:

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4                           I. JURISDICTION

5           1. This Court has jurisdiction of the subject matter of this  
6 action pursuant to 28 U.S.C. Sections 1331, 1345 and 1355; Section 309(b) of  
7 the Clean Water Act, 33 U.S.C. §1319(b); the Refuse act, 33 U.S.C. §407; and  
8 jurisdiction over the parties hereto. The Complaint filed herein states a  
9 claim upon which relief can be granted against the defendants.

10           2. Defendants Marine Power and Equipment Company (MPE) and WFI  
11 Industries, Inc. (WFI) are Washington corporations authorized to do business  
12 in the state of Washington.

13           3. The provisions of this Consent Decree shall apply to and be  
14 binding upon the parties to this action, their officers, directors,  
15 servants, employees and successors or assigns.

16                           II. FINDINGS OF FACT

17           4. This action relates to Defendants' ship repair and painting  
18 facilities in Seattle, Washington. The facilities are known as the  
19 "Duwamish Facility" located on the west bank of the Duwamish River and the  
20 "Lake Union Facility" which is located on the north bank of Lake Union at  
21 1441 North Westlake Way.

22  
23           5. At the Duwamish Facility in 1984 and 1985, the defendants  
24 discharged pollutants into the Duwamish River, which is navigable waters of  
25 the United States within the meaning of 33 U.S.C. §1362(7). The pollutants,  
26 consisting of spent sandblasting materials, paint, other debris, and process  
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1 wastes, were discharged to the Duwamish River by submerging dry docks on  
2 which piles of the debris had accumulated as a result of MPE's sandblasting  
3 operations and from hoses or pipes. Upon submersion of the dry docks into  
4 water, much of the sandblasting residues and debris washes off the docks  
5 into the Duwamish River.

6 6. The sandblasting residue, debris, and process wastes  
7 generated by the defendants at the Duwamish Facility include, but are not  
8 limited to:

- 9 a. used sandblasting material;  
10 b. chips of paint, tar, rust, and other chemical substances  
11 sandblasted and removed from the exterior of ships;  
12 c. solvents and other materials used to prepare the  
13 sandblasted surfaces for repainting and refinishing and for other purposes;  
14 d. spilled liquids used to repaint and refinish the  
15 sandblasted surfaces of the ships; and  
16 e. grease and oil.

17 7. The materials described in paragraph 6 constitute  
18 "pollutants" within the meaning of 33 U.S.C. §1362(6). The dry docks and  
19 hoses or pipes used at the Duwamish Facility from which these pollutants are  
20 discharged constitute "point sources" within the meaning of 33 U.S.C.  
21 §1362(14).

22 8. Some of the discharged pollutants described in paragraph 6  
23 have collected in and on the bottom sediments of th Duwamish River. Based  
24 on information and belief, those pollutants in part remain on the river  
25 bottom and, in part, have been dispersed into Puget Sound.  
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1           9. The above-described discharges of pollutants constitute  
2 violations of Section 301(a) of the CWA, 33 U.S.C. §1311(a). Accordingly,  
3 the defendants are liable for civil penalties pursuant to Section 309 of the  
4 CWA, 33 U.S.C. §1319, in an amount not to exceed \$10,000 per day for each  
5 calendar day on which defendants discharged pollutants from the Duwamish  
6 Facility.

7           10. Defendants' discharges of sandblasting material and other  
8 debris from the Duwamish Facility into the Duwamish River constitute a  
9 deposit of refuse into a navigable water in violation of the Refuse Act,  
10 33 U.S.C. §407.

11           11. The Duwamish Facility occupies parts of the banks and  
12 shorelines adjoining navigable waters of the United States within the  
13 meaning of the Refuse Act, 33 U.S.C. §407.

14           12. In addition to depositing refuse in navigable waters, the  
15 defendants have deposited at the Duwamish Facility certain refuse, namely  
16 sandblasting residues of the same type and composition as those described in  
17 paragraph 6. That refuse is currently located upon the east bank of the  
18 Duwamish River in such a location as to be susceptible to being washed into  
19 the river. Such deposits of materials on the banks violate the Refuse Act,  
20 33 U.S.C. §407.

21           13. At the Lake Union Facility in 1984 and 1985, the defendants  
22 discharged pollutants into Lake Union, which is navigable waters of the  
23 United States within the meaning of 33 U.S.C. §1362(7). The pollutants,  
24 consisting of spent sandblasting materials, paint, other debris, and process  
25 wastes, were discharged to Lake Union by submerging docks on which piles of  
26 the debris had accumulated as a result of MPE's sandblasting operations and  
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1 from hoses or pipes. Upon submersion of the dry docks into water, much of  
2 the sandblasting residues and debris washes off the docks into Lake Union.

3 14. The sandblasting residue, debris, and process wastes  
4 generated by the defendants at the Lake Union Facility include, but are not  
5 limited to:

- 6 a. used sandblasting material;
- 7 b. chips of paint, tar, rust and other chemical substances  
8 sandblasted and removed from the exterior of ships;
- 9 c. solvents and other materials used to prepare the  
10 sandblasted surfaces for repainting and refinishing and for other purposes;
- 11 d. spilled liquids used to repaint and refinish the  
12 sandblasted surfaces of the ships; and
- 13 e. grease and oil.

14 15. The materials described in paragraph 14 constitute  
15 "pollutants" within the meaning of 33 U.S.C. §1362(6). The dry docks and  
16 hoses or pipes used at the Lake Union Facility from which such pollutants  
17 have been and are discharged constitute "point sources" within the meaning  
18 of 33 U.S.C. §1362(14).

19 16. Some of the discharged pollutants described in paragraph 14  
20 have collected in and on the bottom sediments of Lake Union.

21 17. The above-described discharges of pollutants constitute  
22 violations of Section 301(a) of the CWA, 33 U.S.C. §1311(a). Accordingly,  
23 the defendants are liable for civil penalties pursuant to Section 309 of the  
24 CWA, 33 U.S.C. §1319, in an amount not to exceed \$10,000 per day for each  
25 day on which defendants discharged pollutants from the Lake Union Facility.  
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1 18. Defendants' discharges of sandblasting material and other  
2 debris from the Lake Union Facility into Lake Union constitute a deposit of  
3 refuse into a navigable water in violation of the Refuse Act, 33 U.S.C. §407.

4 19. The Lake Union facility occupies parts of the banks and  
5 shorelines adjoining navigable waters of the United States within the  
6 meaning of the Refuse Act, 33 U.S.C. §407.

7 20. In addition to depositing refuse in navigable waters, the  
8 defendants have deposited at the Lake Union Facility on the north bank of  
9 Lake Union certain refuse, namely sandblasting residues of the same type and  
10 composition as those described in paragraph 14. That refuse is currently  
11 located upon the north bank of Lake Union in such a location as to be  
12 susceptible to being washed into the lake. Such deposits of materials on  
13 the banks violate the Refuse Act, 33 U.S.C. §407.

14 IV. AGREEMENT AND ORDER

15 Cessation of Unauthorized Discharges

16 21. Defendants are permanently enjoined from discharging  
17 pollutants to waters of the United States except in compliance with a permit  
18 issued by the State of Washington Department of Ecology (WDOE) pursuant to  
19 Section 402 of the Clean Water Act, 33 U.S.C. §1342.

20 22. Defendants shall carry out all of the measures specified in  
21 the attached document entitled "Mitigation Requirements," which is  
22 Attachment 1 to this Decree and by this reference incorporated herein.  
23 Attachment 1 generally calls for the removal from the bottom of the Duwamish  
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1 River and Lake Union all of the pollutants discharged by the Defendants  
2 which remain on the river and lake bottom. One of the mitigation  
3 requirements set forth in Attachment 1 is that Defendants shall periodically  
4 submit reports to Plaintiffs demonstrating that the measures carried out  
5 meet the specified performance standards. If Plaintiffs deem that such  
6 standards have not been satisfied, they shall inform Defendants of such  
7 additional measures as they deem necessary to carry out these performance  
8 standards. If the parties do not agree as to the need for additional  
9 mitigation measures, then the parties shall resolve such disagreement  
10 through the dispute resolution procedures specified in paragraph 23 of this  
11 Decree.

12 23. Plaintiffs will inform Defendants of any modifications they  
13 propose to the mitigation plan or report described in paragraph 22.  
14 Plaintiffs will also inform Defendants of any measures they determine to be  
15 necessary to meet the mitigation performance standards specified in  
16 Attachment 1 and paragraph 22 above. Defendants will perform those  
17 additional measures, and incorporate those modifications, with which it  
18 agrees. If Defendants do not agree to such modifications or additional  
19 measures as proposed by Plaintiffs, then the parties shall confer in an  
20 effort to resolve the matter informally. If the parties cannot reach an  
21 amicable resolution of the issue, any party may file a petition with the  
22 Court setting forth the matter in dispute and requesting a hearing thereon  
23 and appropriate relief. The procedure described in this paragraph shall be  
24 the exclusive procedure, other than by mutual agreement among the parties,  
25 for resolving disputes on the contents of the reports and plans to be  
26 submitted pursuant to paragraph 22 above or on the need for measures to meet  
27 the mitigation performance standards specified in Attachment 1.  
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1 time for performance hereunder shall be excused or extended for a period  
2 equal to the delay resulting from such circumstances. However, neither  
3 increased costs for performance of the terms and conditions of this Decree  
4 nor changed economic circumstances may be considered circumstances beyond  
5 Defendant's control. Defendants' failure to supply the information required  
6 above within seven days of the oral notification shall constitute a waiver  
7 of such claim.

8 Stipulated Penalties for Future Violations

9 27. Unless excused by the provisions of paragraph 26, Defendant's  
10 shall incur, and pay within ten (10) days of receipt of written demand by  
11 the United States, the following stipulated penalties for the enumerated  
12 types of violations of this Decree:

<u>Requirement</u>	<u>Amount per Day</u>
A. Submit a document, report or plan as required by paragraph 22	\$ 500.00
B. Complete mitigation measures by the dates specified in paragraph 22 or by Attachment 1	\$ 2,000.00
C. Refrain from further unauthorized discharges of pollutants as required by paragraph 21	\$ 5,000.00

21 28. Stipulated penalties made payable pursuant to paragraph 27  
22 shall be paid by cashier's or certified check made payable to the  
23 "Treasurer, United States of America," and delivered to the office of United  
24 States Attorney, 3600 Seafirst Fifth Avenue Plaza, Seattle, Washington 98104.

25 29. Any dispute with respect to defendant's liability for a  
26 stipulated penalty shall be resolved by this Court.  
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30. The provisions of paragraphs 27-29 shall not be construed to limit any other remedies, including but not limited to institution of proceedings for civil or criminal contempt, available to Plaintiffs for violations of this Consent Decree or any other provision of law.

## General Provisions

31. This Decree in no way relieves defendant of responsibility to comply with any federal, state or local law or regulation. In particular, but without limitation, defendant shall obtain all necessary permits under federal and state law prior to carrying out mitigation under this Decree.

32. Any modifications to this Decree must be in writing and approved by this Court, except extension of deadlines as provided herein.

33. This Court shall retain jurisdiction of this case for the purpose of enabling any party to apply to the Court at any time for such further relief as may be appropriate to interpret, enforce, modify or terminate this Decree. Otherwise, the obligations imposed by this decree shall terminate on December 31, 1988, except that the United States may take action after that time to demand and collect stipulated penalties for violations that occur during the pendency of the Decree.

35. Each party in this action shall bear its own costs, including attorney's fees.

ENTERED this            day of \_\_\_\_\_, 1987.

United States District Judge

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2 FOR DEFENDANTS:

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4 \_\_\_\_\_  
5 Marine Power and Equipment Co., Inc.  
6

7 \_\_\_\_\_  
8 WFI Industries, Inc.

FOR PLAINTIFFS:

9 \_\_\_\_\_  
10 F. HENRY HABICHT, II  
11 Assistant Attorney General  
12 Land & Natural Resources Div.  
13 U.S. Department of Justice

14 \_\_\_\_\_  
15 GENE ANDERSON  
16 United States Attorney

17 \_\_\_\_\_  
18 JACKSON FOX  
19 Assistant United States Attorney

20 \_\_\_\_\_  
21 JAMES L. NICOLL  
22 Assistant Attorney General  
23 Land & Natural Resources Div.  
24 U.S. Department of Justice

25 \_\_\_\_\_  
26 THOMAS A. ADAMS  
27 Assistant Administrator for  
28 Enforcement and Compliance Monitoring  
U.S. Environmental Protection Agency

\_\_\_\_\_

MONICA KIRK  
Assistant Regional Counsel  
U.S. Environmental Protection Agency

KEN EIKENBERRY  
Attorney General  
State of Washington

\_\_\_\_\_

LEE REESE  
Deputy Attorney General

## MARINE POWER - REMOVAL PLAN

1. Not later than July 15, 1987, Marine Power and Equipment (MPE) shall establish, based on soundings and/or other methods, the physical extent of the deposits at both the Lake Union and Duwamish sites. MPE shall provide to EPA charts of both sites showing the areas covered by the deposited materials to a depth of 1 inch or more and indicating topographically the probable depths throughout such areas.
2. Not later than August 15, 1987, MPE shall establish, based on corings and/or other methods, the physical and chemical characteristics of the deposited materials as those characteristics relate to the efficacy of various removal methods (including "open bucket" dredging, vacuum dredging, the necessity and utility of silt curtains, etc.) and of various disposal methods including landfilling (eg: at a county landfill).
3. Not later than September 15, 1987, MPE shall evaluate various methods of removal and disposal. Not later than October 15, 1987, MPE shall identify the methods to be employed and shall prepare and submit to EPA a removal and disposal plan which reflects the findings of the foregoing evaluations. Said plan shall (1) assure not less than 90% removal of the deposited materials, (2) identify all necessary permits or approvals needed to commence the work, and (3) include a detailed time schedule for completion of removal and disposal commencing not later than May 1, 1988. Sufficient copies of the plan shall be provided to allow distribution to all

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federal, state and local agencies from which permits or other such authorizations must be obtained.

4. Not later than 30 days after approval of the plan by EPA, MPE shall submit complete applications for any necessary permits (eg: CWA Section 404 Dredge and Fill permits, Washington Department of Fisheries Hydraulic Improvement permits, shoreline management permits, county/local disposal permits, etc.)
5. Not later than May 1, 1988, MPE shall initiate removal and disposal of the deposited material in accordance with the approved plan.
6. Not later than November 1, 1988, MPE shall complete all removal and disposal activities set forth in the approved plan.
7. Not later than January 1, 1989, MPE shall conduct a survey of both sites to assure that the basic intent of the plan (not less than 90% removal of the deposited materials) has been met. A full report on the removal and disposal of the deposited materials, including the results of this survey shall be provided to EPA not later than January 15, 1989.

NOTE: Required dates for items 5, 6 and 7 may be amended based upon the schedule to be set forth in the approved plan of removal and disposal or upon requirements imposed through federal, state or local permits issued for such work.